

# **5-14.000 THE INDIAN RESOURCES SECTION**

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## **5-14.001**

### **Establishment**

The Indian Resources Section was created on May 27, 1975, by the Environment and Natural Resources Directive No. 6-75, to conduct litigation for the United States as trustee for the private rights of Indian people.

### **5-14.100 Area of Responsibility**

The Indian Resources Section conducts and supervises civil litigation on behalf of the United States both in defense of suits against individual Indians or tribes and prosecution of suits on behalf of Indian tribes or individuals. Lawsuits brought by Indians or Indian tribes against the United States or federal officials is the responsibility of the General Litigation Section (*see* USAM 5-7.000). Litigation usually supervised by the Indian Resources Section includes protection of tribal assets or jurisdiction, assertion of Indian rights to property including hunting, fishing and water rights and the protection of tribal sovereignty in such areas as taxation, alcoholic beverage control, law enforcement and reservation boundaries.

### **5-14.120 Statutes Administered**

Most of the statutes pertaining to the trust responsibilities of the United States to Indian people are found in Title 25 of the United States Code except for matters under the Indian Civil Rights Act, 25 U.S.C. § 1302 *et seq.*, which are the responsibility of the Civil Rights Division.

### **5-14.130 Information Concerning the Conduct of Indian Litigation by the United States**

Guidance concerning the role of the Department of Justice in the conduct of Indian litigation is set forth in a 1979 letter from the Attorney General to the Secretary of the Interior. A copy of the letter can be found in the ENRD Resource Manual at 59. A useful source of information concerning the law relating to Indian litigation and the United States' role therein, is contained in Felix S. Cohen's Handbook of Indian Law (1982 ed.).

## **5-14.200 Organization**

The Indian Resources Section is administered by a Chief and an Assistant Chief.

## **5-14.300 Processing and Handling of Cases -- Requests for Representation by Individual Indians to United States Attorneys**

A. 25 U.S.C. § 175 provides that the United States Attorney shall represent Indians in any lawsuit in states where there are reservations or Indian allottees. This statute has been construed to be non-mandatory. *Gila River Indian Community v. Henningson*, 626 F.2d 708, 710, n. 5 (9th Cir.1980).

B. When a request for representation is received by a United States Attorney, the requestor should be advised that no action can be taken until the matter is reviewed by the Department of the Interior, and its recommendation is received. The United States Attorney should refer the request to the nearest Regional Solicitor's office of the Department of the Interior with a copy to the Chief, Indian Resources Section.

C. The United States Attorney will be advised of any recommendations from the Department of the Interior on requests under Section 175 and consulted thereon before the Chief, Indian Resources Section makes any final determination.

## **5-14.310 Authority of United States Attorneys to Initiate or Terminate Actions Without Prior Authorization**

A. Subject to the provisions of USAM 5-1.310, United States Attorneys are authorized to act in matters concerning tribal and restricted Indian land, not involving unique or unusual questions of law or fact or matters concerning title or water rights, without prior authorization from the Land and Natural Resources Division, only in the following cases:

1. Actions to recover possession of property from tenants, squatters, trespassers or others, and actions to enjoin trespasses on the land, if the actual damages based upon a trespass do not exceed \$200,000;
2. Actions to collect delinquent operation and maintenance charges accruing on Indian irrigation projects of not more than \$200,000;
3. Actions to collect damages resulting from the default on a contract to remove timber from Indian lands, providing such damages do not exceed \$200,000.

B. The actions described in paragraph A, may be referred directly from the originating agency to the appropriate United States Attorney provided that the Chief, Indian Resources Section is notified immediately by receipt of a copy of the referral letter. The Indian Resources Section must be further advised in writing from the United States Attorney of any dispositive action taken on the referral including the filing of a complaint.

C. Subject to the provisions of USAM 5-5.210, all actions described in paragraph A, referred directly to a United States Attorney may be settled or dismissed without prior approval of the Assistant Attorney General provided the Indian tribe or individual involved concurs in the disposition. All other actions may not be dismissed or settled without the approval of the Assistant Attorney General.

D. Prior to the initiation of litigation on behalf of individual Indians or Indian tribes or termination thereof, efforts should be made to consult with the individual Indians or tribes and their counsel to obtain their concurrence in the course of action proposed.

#### **5-14.400 General Procedures in District Court Litigation -- Conflicts of Interest**

In cases involving Indian representation by the United States, conflicts may arise between Indian interests and those of particular entities of the federal government. Guidance concerning resolution of these conflicts is included in the Attorney General's letter referenced in USAM 5-14.130. When it is determined that such conflicts exist and can not be resolved, the Chief, Indian Resources Section should be notified.

#### **5-14.420 Intervention**

Intervention by individual Indians or Indian tribes in litigation where the Department of Justice has undertaken the representation of the individual Indians or tribes is not encouraged, especially where Indian or tribal concurrence has been obtained in accord with USAM 5-14.310D.